

## HOUSE BILL NO. 50

INTRODUCED BY B. LAKE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE MUST BE CONSISTENT WITH AND NOT IN CONFLICT WITH LEGISLATIVE INTENT; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) The agency shall fully consider written and oral submissions respecting ~~the~~ a proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing

1 board or commission must include a citation to and description of the policy implemented. Each agency rule  
2 implementing a policy and the policy itself must be based on legal authority and otherwise comply with the  
3 requisites for validity of rules established by this chapter.

4 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and  
5 in accordance with standards prescribed by other provisions of law.

6 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules  
7 to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,  
8 amendment, or repeal of a rule is not valid or effective unless it is:

9 (a) consistent and not in conflict with the statute; ~~and~~

10 (b) consistent and not in conflict with legislative intent, as expressed in the authorizing or implemented  
11 statute, or both, and any applicable legislative committee minutes, legislative committee report, or other report  
12 of the legislature; and

13 ~~(b)(c)~~ reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency  
14 adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for  
15 a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement  
16 by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale  
17 for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules.  
18 Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated  
19 for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the  
20 written and oral data, views, comments, or testimony submitted by the public or the agency and considered by  
21 the agency. A statement that merely explains what the rule provides is not a statement of the reasonable  
22 necessity for the rule.

23 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302,  
24 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the  
25 publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final  
26 rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference  
27 to the latest notice in all cases.

28 (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in  
29 citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended  
30 proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a

1 statement of reasonable necessity.

2 (9) If a majority of the members of the appropriate administrative rule review committee notify the  
3 committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall  
4 notify the agency in writing that the committee objects to the proposal notice and will address the objections at  
5 the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be  
6 adopted until publication of the last issue of the register that is published before expiration of the 6-month period  
7 during which the adoption notice must be published, unless prior to that time, the committee meets and does not  
8 make the same objection. A copy of the committee's notification to the agency must be included in the  
9 committee's records."

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11 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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13 NEW SECTION. **Section 3. Applicability.** [This act] applies to any rule, as defined in 2-4-102, proposed  
14 for adoption after [the effective date of this act].

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